

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
May 3, 2005 Session

**STATE OF TENNESSEE , EX REL. DIANA FRANCES IRWIN v. JOSEPH
MABALOT**

**Appeal from the Circuit Court for Davidson County
No. 03R-167 Muriel Robinson, Judge**

No. M2004-00614-COA-R3-CV - Filed December 13, 2005

A mother left her husband after a brief marriage and moved to Arizona with their young child. The mother obtained an Arizona divorce by default in 1991. She and the child received public assistance sporadically during the ensuing years. In 2003, the State of Arizona petitioned the Tennessee court under the Uniform Interstate Family Support Act to impose an order for child support and medical insurance on the father, who had remained a Tennessee resident. After a hearing, the court ordered the father to pay prospective child support as well as retroactive child support dating back to the filing of the petition. The State appealed, contending that the trial court erred in failing to order the father to pay retroactive support from the date of divorce. We remand this case to the trial court for findings of fact and conclusions of law as are required under Tenn. Code Ann. § 36-5-101(e).

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Vacated and Remanded**

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and WILLIAM B. CAIN, J., joined.

Paul G. Summers, Attorney General & Reporter, Stuart F. Wilson-Patton, Senior Counsel, for the appellant, State of Tennessee, *ex. rel.*, Diana Frances Irwin, c/o Division of Child Support.

Clark Lee Shaw, Cynthia J. Bohn, Derek K. Burks, Nashville, Tennessee, for the appellee, Joseph Mabalot.

OPINION

I. A DIVORCE BY DEFAULT

Joseph Mabalot (Father) and Diane Irwin (Mother) were married in Springfield, Tennessee on November 23, 1988. A daughter, Samantha, was born on August 28, 1989. When the child was about six months old, Mother left Father and moved out of state with the child. About three months after she left, Mother telephoned Father and told him that she was staying with her parents. Father knew that the parents lived in Arizona, but he had never spoken to them, did not know their first names, and did not know their address. During that conversation, and at least one conversation thereafter, Mother told Father, “I’ll never ask you for child support.”

Father moved shortly after that telephone conversation, because he was unable to pay the rent on what had been the marital home. In 1991, Mother filed for divorce in the Superior Court of Maricopa County, Arizona. Service on Father was by publication, and the divorce was granted by default. The Decree of Dissolution of Marriage, filed on October 25, 1991, was signed by a Court Commissioner. The decree awarded custody of Samantha to Mother, granted standard visitation to Father, and recited that Father was capable of paying reasonable child support. However, no child support was ordered.¹

The next contact between Mother and Father occurred about six years later, when Mother telephoned Father. She told him that she had remarried and asked if it would be all right with him if she changed their daughter’s last name. He agreed, but never received any paperwork. Mother again declared that she would never ask Father for child support. Father himself remarried in 1998.

Mother applied at some point for public assistance from the State of Arizona. The record is silent as to exactly when she applied and how much assistance she received. As part of, or a condition of, receipt of assistance, Mother assigned her rights and those of the child to child support and medical support to the State of Arizona.

II. A PETITION FOR SUPPORT

On May 3, 2003, the Arizona Department of Economic Security named Father as the respondent in a petition for current and retroactive child support and medical coverage under the Uniform Interstate Family Support Act (UIFSA). The petition was filed, together with supporting documents, in the Circuit Court of Davidson County. The State of Tennessee took over the case on behalf of the State of Arizona, and at some point the style of the case was changed to reflect this fact.

The petition and supporting documents consisted of pre-printed standard forms, filled in by Mother. She listed her “Occupation, Trade or Profession” as “Student,” and indicated that in

¹Father testified that he did not receive a copy of the Divorce Decree until he was served with the State of Arizona’s Petition for Child Support in 2003.

addition to Samantha, she now has a son. In the space for “Period during which public assistance was paid,” she indicated that it began in 1990 and continued “on & off” to the present. The only income listed on the form was \$347 per month “DES cash assistance,” with a parenthetical comment that “child support goes \$240 to State for my son.”²

Joseph Mabalot filed a sworn Response to the Petition, in which he denied that he was Samantha’s biological father and requested DNA testing. The testing was duly ordered, resulting in a finding of a 99.99 percent probability that he was Samantha’s father. The court then scheduled a hearing, which was conducted on January 8, 2004.

Mother did not appear, and Father was the only witness to testify. He testified that he married Mother when she was pregnant because she did not want the child to suffer from the stigma of illegitimacy. He claimed that he took Mother’s statement that she would never ask him for child support as an indication that he might not be the actual father in part because she also said, “I just would never do that to you.”

Father further testified that he did not know how to contact Mother and that when he asked her for an address she refused, saying it was none of his business where she was. He also said that if she had ever asked for child support, he would have paid it. He claimed that at one point she did give him a physical address, and that he attempted to send a gift to Samantha at that address, but that the gift was returned undelivered. He stated, “the address – they couldn’t find it because it was in the Grand Canyon. So it was on some reservation or out in the middle of the desert, or whatever is in the Grand Canyon.” He also testified that later, after he had remarried, at one point he had to change his phone number because Mother was constantly calling and harassing his new wife. The paperwork filed with the petition indicate Mother obtained Father’s latest address from his other daughter.

Prior to the hearing on the petition, the parties had agreed that the appropriate amount of child support under the guidelines was \$369 per month, apparently based on Father’s current income of \$26,000 per year. The State sought an award of retroactive child support dating from the divorce. Father declared himself ready to pay the prospective support, but argued that the trial court should deviate downward from the child support guidelines by not ordering any retroactive support at all, or in the alternative, none prior to the date the UIFSA Petition was filed.

In its ruling from the bench, the trial court indicated that it was aware of the controlling statute in matters involving retroactive support and abandonment, by saying “under these circumstances, when you apply the deviation clause, I can find that the person that knew where everybody was was the child’s mother because he’s never moved from the time that she knew he was in Nashville.” The court ordered Father to pay \$369 per month in prospective child support, as well as retroactive child support dating from the filing of the petition, in the amount of \$2,527, to be paid

²The petition included Mother’s home address and telephone number, giving Father access to that information for the first time since Mother left him.

off at the rate of \$50 per month. Father was also ordered to procure and maintain health insurance for the child.

The court's decision was memorialized in an Order filed on February 6, 2004. The Order did not recite the findings made by the court at the close of the hearing, but instead stated "[t]he Court makes a finding that the Mother told the Father that she would never seek child support in this matter and it appears to the court that the Mother is not seeking child support in this matter but that the State of Arizona is seeking support."

The State appeals and argues that the trial court should have awarded retroactive child support back to the date of the divorce in the amount of \$38,128.

III. APPLICABLE LAW

In cases where one of the parents and/or a child is domiciled outside of this state, the provisions of the Uniform Interstate Family Support Act (UIFSA), Tenn. Code Ann. §§ 36-5-2301 *et seq.*, come into play. The establishment, enforcement, or modification of support orders across state lines is governed by UIFSA. *LeTellier v. LeTellier*, 40 S.W.3d 490, 493 (Tenn. 2001). Tennessee Code Annotated § 36-5-2401 authorizes a Tennessee court to order a parent residing in this state to pay for the support of a child who lives in another state, if no such order has been issued in that other state. In the case before us, no child support was ordered when the parties were divorced by an Arizona court, even though custody of Samantha was awarded to her mother.³

In such cases, the substantive law is no different from that applicable to cases where all the parties and the child are Tennessee residents. Tennessee Code Annotated § 36-5-2604(a), part of UIFSA, declares, "[t]he law of the issuing state governs the nature, extent, amount and duration of current payments and other obligations of support and the payment of arrearages under the order." Consequently, we must look to Tenn. Code Ann. § 36-5-101, which governs child support in this state.

Tennessee courts are authorized to award child support as part of a divorce, Tenn. Code Ann. § 36-5-101(a)(1), or when parentage is established, Tenn. Code Ann. § 36-2-311(a)(11). When making an initial award of child support, the court is required to establish not only prospective support, but also to determine retroactive support. Tenn. Comp. R. & Regs. 1240-2-4-.04(1)(e).

In determining "the amount of support," courts are to apply the child support guidelines promulgated by the Tennessee Department of Human Services. Tenn. Code Ann. 36-5-101(e)(2). The guidelines "are designed to make awards more equitable by providing a standardized method

³The decree of dissolution of marriage appearing in the record before us includes a paragraph of apparently standard language regarding child support. That paragraph has been marked out by the court commissioner signing the decree. The eliminated standard language orders the payment of child support and includes a blank space in which to enter the monthly amount. That space was not filled in. We can speculate that the divorcing court did not order Father to pay support because he was served only by publication.

of computation.” *Jones v. Jones*, 930 S.W.2d 541, 543 (Tenn. 1996). A support obligation calculated in accordance with the guidelines is rebuttably presumed to be correct. Tenn. Code Ann. § 36-5-101(e)(1)(A).

While the child support guidelines are to be applied as a rebuttable presumption as to the amount of support, courts can deviate from the guideline amount if the evidence in a particular case rebuts the presumption.⁴ Tenn. Code Ann. § 36-5-101(e)(1)(A). The trial court is authorized to deviate from the guidelines in individual cases where their application would be unjust or inappropriate “in order to provide for the best interest of the child or children, **or** the equity between the parties.” *Id.* (emphasis added). If the court chooses to so deviate, it must make specific written findings to that effect and must state the amount of support that would have been ordered under the guidelines, as well as the justification for its deviation from the guidelines. *Id.*; *See also* Tenn. Comp. R & Regs. 1240-2-4-.01(2) & (3).

When courts are required to establish retroactive as well as prospective support, the guidelines provide that such retroactive support is to be calculated back to the birth of the child or the separation or divorce of the parties. Tenn. Comp. R & Regs 1240-2-4-.04(1)(e). While courts are authorized to deviate from the amount arrived at by application of the relevant guidelines formula for calculation of retroactive support, that authority is limited. *See Berryhill v. Rhodes*, 21 S.W.3d 188, 192-94 (Tenn. 2000). However, by legislative amendment, trial courts have been given greater discretion in determining retroactive support in certain circumstances where parents divorce, no support order is entered, and one spouse leaves with the child.

In 2003, the General Assembly amended Tenn. Code Ann. § 36-5-101(e) by adding provisions relating to the payment of retroactive child support to abandoning spouses.⁵ The amended Tenn. Code Ann. § 36-5-101(e)(1)(C), (D), and (F)⁶ read as follows:

(C) When making retroactive support awards pursuant to the child support guidelines established pursuant to this subsection (e), in cases where the parents of the minor child are separated or divorced, but where the court has not entered an order of child support, the court shall consider the following factors as a basis for deviation from the presumption in the child support guidelines that child and medical support for the

⁴Courts are authorized to order “suitable” support for children, “according to the nature of the case and the circumstances of the parties.” Tenn. Code Ann. § 36-5-101(a)(1). Thus, the guideline amount is the presumptive “suitable” amount.

⁵2003 Tenn. Pub. Acts, ch. 361 § 2. The Act provides that it “shall take effect upon becoming law, the public welfare requiring it and shall apply to any pending case in which the judgment of the trial court has not become final by such effective date.” The amendment became law on June 17, 2003, and is thus applicable to the present case.

⁶Subsection (E) prohibits deviations on the abandoning spouse ground in enumerated circumstances which involve a history of violence the part of the remaining spouse, abuse or neglect of the child by the remaining spouse, and a finding that the child is the product of rape or incest. None of these circumstances is alleged in the case before us.

benefit of the child shall be awarded retroactively to the date of the parents' separation or divorce:

(i) Whether the remaining spouse knew or could have known of the location of the child or children who had been removed from the marital home by the abandoning spouse; or

(ii) Whether the abandoning spouse, or other caretaker of the child, intentionally, and without good cause, failed or refused to notify the remaining spouse of the location of the child following removal of the child from the marital home by the abandoning spouse; and

(iii) The attempts, if any, by the abandoning spouse, or other caretaker of the child, to notify the remaining spouse of the location of the child following removal of the child from the marital home by the abandoning spouse.

(D) In cases in which the presumption of the application of the guidelines is rebutted by clear and convincing evidence, the court shall deviate from the child support guidelines to reduce, in whole or in part, any retroactive support. The court must make a written finding that application of the guidelines would be unjust or inappropriate in order to provide for the best interests of the child or the equity between the parties.

...

(F) In making any deviations from awarding child and medical support retroactively to the separation or divorce of the parties, the court shall make written findings of fact and conclusions of law to support the basis for the deviation, and shall include in the order the total amount of retroactive child and medical support that would have been paid retroactively to the separation or divorce of the parties, had a deviation not been made by the court.

These statutory provisions undoubtedly apply herein since the parents of the minor child are divorced and neither the divorcing court nor another court has entered an order of child support. Tenn. Code Ann. § 36-5-101(e)(1)(C). In applying the statute, clearly Father would be considered the “remaining spouse” and Mother would be the “abandoning spouse.”

The State argues that the trial court’s order in this case does not comply with the requirements of Tenn. Code Ann. § 36-5-101(e)(C) through (H) in several respects: (1) the reason stated by the court for the downward deviation is not sufficient as a matter of law; (2) the trial court did not make the statutorily required written findings to support the downward deviation; and (3) the court failed to apply the clear and convincing evidence standard, and Mr. Mabalot did not establish a statutory basis under that standard of proof.

IV. THE TRIAL COURT’S ORDER

The trial court’s order did not contain an express finding that imposition of retroactive child support back to the date of the parties’ divorce would be unjust or inappropriate in view of equity between the parties, as is required by Tenn. Code Ann. § 36-5-101(e)(1)(D), although that is certainly the implication of the court’s ruling. Further, the order does not include “written findings of fact and conclusions of law to support the basis for the deviation,” as is required by Tenn. Code Ann. § 36-5-101(e)(1)(F), if the basis for the deviation lies in the recently enacted provisions relating to an abandoning spouse.

The trial court’s oral statements at the end of the hearing addressed the factors in Tenn. Code Ann. § 36-5-101(e)(1)(C), with the court indicating that it found that Mother was the only person who always knew where the parties and the child were. Unfortunately, neither that nor other findings of fact related to the factors set out in Tenn. Code Ann. § 36-5-101(e)(1)(C)(i) - (iii) were set out in writing in the order. Neither did the order include the total amount of support that would have been paid retroactively had a deviation not been made by the trial court, as required in Tenn. Code Ann. § 36-5-101(e)(1)(F).⁷

The trial court’s expressed reason for refusing to order the entire amount of support back to the date of divorce might be interpreted as a finding that to do otherwise would be inequitable under a general definition of inequity.⁸ See Tenn. Code Ann. § 36-5-101(e)(1)(A). However, the parties’ arguments, the trial court’s oral observations, and the language of Tenn. Code Ann. § 36-5-101(e)(1)(C), taken altogether, require us apply the 2003 amendments in resolving this appeal.

Because we have found no other authority interpreting the 2003 amendments and because the arguments of the parties demonstrate some disagreement as to their interpretation, we must set forth some basic conclusions about the meaning of the provisions at issue before we apply them to the case at hand. In doing so, we apply well-known rules.

The primary rule of statutory construction is “to ascertain and give effect to the intention and purpose of the legislature.” *LensCrafters, Inc. v. Sundquist*, 33 S.W.3d 772, 777 (Tenn. 2000). Courts must do so without unduly restricting or expanding a statute beyond its intended scope. *In re C.K.G., C.A.G., & C.L.C.*, 173 S.W.3d 714, 721-22 (Tenn. 2005). To determine legislative intent, one must look to the natural and ordinary meaning of the language used in the statute itself. We

⁷There is no dispute as to that amount, and the parties presented that amount as stipulated to the trial court who was therefore aware of it when making the deviation. Consequently, the omission in the written order of that amount is unlikely to have affected the result in the trial court and does not hamper our review. If this were the only omission we would not remand from inclusion of that amount in the order since neither the interests of the parties nor judicial economy would be served thereby.

⁸The State argues, however, that because parents cannot agree to deprive a child of support, the court’s stated basis cannot be upheld. Because we conclude this case is governed by the 2003 amendments, it is unnecessary to address the State’s contention that the reason stated in the trial court’s order is insufficient as a matter of law.

must examine any provision within the context of the entire statute and in light of its over-arching purpose and the goals it serves. *State v. Flemming*, 19 S.W.3d 195, 197 (Tenn.2000); *Cohen v. Cohen*, 937 S.W.2d 823, 828 (Tenn. 1996); *T.R. Mills Contractors, Inc. v. WRH Enterprises, LLC*, 93 S.W.3d 861, 867 (Tenn. Ct. App. 2002). The statute should be read “without any forced or subtle construction which would extend or limit its meaning.” *National Gas Distributors, Inc. v. State*, 804 S.W.2d 66, 67 (Tenn.1991). Statutes relating to the same subject matter or having a common purpose are to be construed together. *In re C.K.G., C.A.G., & C.L.G.*, 173 S.W.3d at 722.

As our Supreme Court has said, “[w]e must seek a reasonable construction in light of the purposes, objectives, and spirit of the statute based on good sound reasoning.” *Scott v. Ashland Healthcare Center, Inc.*, 49 S.W.3d 281, 286 (Tenn. 2001), citing *State v. Turner*, 913 S.W.2d 158, 160 (Tenn. 1995). Courts must look to a statute’s language, subject matter, objective or purpose, and the wrong it seeks to remedy or prevent. *In re C.K.G., C.A.G., & C.L.G.*, 173 S.W.3d at 722. Courts are also instructed to “give effect to every word, phrase, clause and sentence of the act in order to carry out the legislative intent.” *Tidwell v. Collins*, 522 S.W.2d 674, 676-77 (Tenn.1975); *In re Estate of Dobbins*, 987 S.W.2d 30, 34 (Tenn. Ct. App. 1998). Courts must presume that the General Assembly selected these words deliberately, *Tenn. Manufactured Housing Ass’n. v. Metropolitan Gov’t.*, 798 S.W.2d 254, 257 (Tenn. App.1990), and that the use of these words conveys some intent and carries meaning and purpose. *State v. Levandowski*, 955 S.W.2d 603, 606 (Tenn. 1997); *Tennessee Growers, Inc. v. King*, 682 S.W.2d 203, 205 (Tenn.1984).

We interpret subsections (C) through (F) of Tenn. Code Ann. § 36-5-101(e)(1) as: (1) **requiring** the court to reduce, in whole or in part, the presumptive amount of retroactive support that would otherwise be due under the guidelines where the presumption that the guidelines amount is the suitable amount is rebutted by clear and convincing evidence; and (2) **allowing** the court to deviate from the presumptive amount where the evidence, although not rising to the clear and convincing level, supports a finding that a deviation is warranted. Under either standard of proof, evidence tending to show the existence of the factors set out in (C) (i), (ii), and (iii) is clearly relevant. Although the court is required to consider those factors, we do not find them the only factors the court can consider in reducing the total amount of retroactive support. *See* Tenn. Code Ann. § 36-5-101(e)(1)(D) (stating that the presumption is rebutted by a finding that application of guidelines would be unjust or inappropriate).

The State argues that the trial court erred by deviating from the guidelines while failing to consider whether such deviation was in the best interest of the child. We disagree with the State’s argument that the court is required to consider the justness or inequity of an award of the presumptive amount of retroactive support in light of the best interest of the child. The relevant statutory provisions direct the court to consider either the interest of the child or the equities between the parties. Tenn. Code Ann. § 36-5-101(e)(1)(A) and (D).⁹ We also note that although Mother has

⁹It is unclear from the record exactly what the direct benefit to the child would be in terms of what amount the child would receive or other impact of such a ruling.

been receiving assistance from Arizona off and on since 1990, nothing in the record suggests why that state did not seek to establish a support order earlier.

Additionally, we interpret subsection (F) to require written findings of fact and conclusions of law supporting a decision to deviate, whether that decision is based on clear and convincing evidence or otherwise. *See* Tenn. Code Ann. § 36-5-101(e)(1)(F)(stating such findings and conclusions are required “in making **any** deviations from awarding child and medical support retroactively to the separation or divorce of the parties.”) The requirement that the court make a written finding that application of the guidelines would be unjust or inappropriate appears in the recent amendments only in subsection (D), which includes the clear and convincing evidence situation. Nonetheless, inclusion of such a written finding would eliminate challenges to an otherwise conforming order on the basis that it is required in all deviations in retroactive support because of the organization of subsection (D) or because of the language of (e)(1)(A) (requiring a finding that application of the guidelines would be unjust or inappropriate in any determination that the presumption that the guidelines apply to determine the amount of child support).

The State correctly asserts that the final order in this case does not meet the statutory requirements. Consequently, we must vacate the order and remand to the trial court for entry of a final order that includes the necessary findings and conclusions. Remand for entry of a new final order, as opposed to remand for a new hearing, is particularly appropriate in this case. The transcript of the evidence in this case shows that Father testified as to facts sufficient to satisfy the factual predicate for deviation set out in Tenn. Code Ann. § 36-5-101(e)(C). There was no countervailing evidence. The trial court’s own statements indicate that it was persuaded of the truth of father’s testimony.

Based upon our review of the evidence and the law, we decline to enter a judgment for all retroactive support back to the date of the parties’ divorce, as the State requests. The statutory provisions added in 2003 clearly address the type of situation that existed between these parties. Through those provisions, the legislature has authorized and directed courts to avoid an inequitable result by considering post-divorce conduct of a parent that prevents the other parent from having a meaningful relationship with his or her child as well as prevents the provision of support. The legislature has established the public policy in such situations, and the State’s policy arguments to the contrary are unavailing.

The State further argues that the evidence does not support a reduction in retroactive support under the terms of Tenn. Code Ann. § 36-5-101 (C) through (F) and that Father failed to establish a proper basis for a deviation by clear and convincing evidence. We have already discussed the clear and convincing evidence portion of the statute. Additionally, we do not agree with the State’s interpretation of the evidence. Although our remand for additional required findings precludes our application of the appropriate standard of review, since the State argues that we should reverse the trial court’s deviation from the presumptive amount of retroactive support because of insufficiency of evidence, we will briefly discuss the evidence in the context of the statutory factors.

V. THE EVIDENCE

The State argues that there was no justification for the trial court's deviation in this case, insisting that even if Father did not know where Mother had relocated with the child, he could have found out if he had just been more persistent and/or spent resources he apparently did not have. However, when we closely examine the factors the court is directed to consider by Tenn. Code Ann. § 36-5-101(e)(1)(C), we note that factor (i) refers only to the acts of the remaining spouse and that (ii) and (iii) refer only to the acts of the abandoning spouse. The disjunctive "or" separates factor (i) from the other two, implying that all three factors need not be satisfied before a deviation can be ordered.

Father's testimony clearly showed that after leaving the marital home, Mother intentionally refused to inform him as to her location or the location of the parties' child. Mother was able, for her own purposes, to initiate contact with Father from time to time, but consistently denied him information on her exact location.

The State suggests that Father was responsible for the lack of contact. Several times in its brief, the State cites Father's testimony that he moved from the marital home and changed his phone number, apparently in an attempt to imply that he made himself unavailable to Mother to prevent her from asking him for support.¹⁰ But Father did not leave the Nashville area, and he testified that Mother had the phone number of his mother and his brother. Mother called the brother, a minister, from time to time, but she declined to give him her phone number or address. In the documentation supporting the petition, Mother states she obtained Father's current address from another child of his.

Under the statute, the mother's conduct alone was sufficient to justify a deviation from the guidelines. Thus, the State's implication that if the father had been less passive he could have discovered the location of his child is beside the point. The statute does not require the non-custodial parent to prove that it was totally impossible for him to locate the child in order for the court to deviate from the guidelines by establishing a later date for the beginning of his child support obligation than the date of separation or divorce.

It appears to us that the language of Tenn. Code Ann. § 36-5-101(e)(1)(C) was carefully tailored to balance the equities between the parents, while affording reasonable protection to the child's interest in receiving financial support from and maintaining a relationship with both parents. The presumption that child support is awarded retroactively to the date of the parents' separation or divorce prevents a non-custodial parent from evading a portion of his or her obligation of support by delaying or hindering the judicial determination of that obligation. The provisions for a deviation from that presumption in cases of abandonment encourage the custodial parent to maintain contact

¹⁰The State argues, for example, that when the father moved, he did not send the mother any change of address notification. However, since she refused to give him her address, it is unclear how he could have done so. In any case, the evidence indicates that the mother always knew or was able to find out where the father lived.

with the non-custodial parent to protect his or her right to collect support except in specified circumstances.

In the present case, the evidence clearly indicates that Mother abandoned Father and chose to prevent him from contacting her or their child. As a result, Father has been deprived of the opportunity to establish a relationship with his daughter. He has remarried and now has another family to support. We note that Father testified that he would have been willing to pay child support all along if Mother had asked him, and that the passage of time has created the potential for a retroactive child support obligation with a devastating effect on the financial stability of Father's current family.

On the basis of the record before us, we cannot say that the trial court could not find the evidence clear and convincing. If on remand the trial court makes a finding that clear and convincing evidence exists, the statutory directive in Tenn Code Ann. § 36-5-101(e)(1)(D) that "... the court *shall* deviate from the child support guidelines to reduce, in whole or in part, any retroactive support" is triggered. Even if the factors in (c)(i) - (iii) are proved only by a preponderance of the evidence, the court could still find that a deviation is justified.

VI. EXCEPTION FOR STATE SUPPORT

The State also cites Tenn. Code Ann. § 36-5-101(e)(1)(G) to argue that the trial court had no discretion to deviate from the child support guidelines in ordering retroactive support. That subsection reads:

Nothing in this subdivision (e)(1) shall limit the right of the State of Tennessee to recover from the father or the remaining spouse expenditures made by the state for the benefit of the child, or the right, or obligation, of the Title IV-D child support agency to pursue retroactive support for the custodial parent or caretaker of the child, where appropriate.

Tenn. Code Ann. § 36-5-101(e)(1)(G).

In this case, Arizona is seeking to recover the expenditures it made on behalf of the child. There is no indication that the State of Tennessee has ever paid support for the child. The State urges us to read the above section as applicable to every state, but has not directed us to any statute or other authority that might support its proposition. Instead, the State simply argues that "the trial court's decision to deviate was an abuse of discretion because it was clearly contrary to the spirit of the law, if not the letter of the law."

Applying the rules of statutory construction, we must assign the natural and ordinary meaning of the language of Tenn. Code Ann. § 36-5-101(e)(1)(G), *i.e.*, "the State of Tennessee" and "the state." That meaning is clear; "the state" means the State of Tennessee. The rights protected by the

statute are rights belonging to the State of Tennessee. To read the statute as including all other states would be to apply a forced construction that would extend the statute beyond its intended scope.

Accordingly, we find Tenn. Code Ann. § 36-5-101(e)(1)(G) inapplicable.

VII. ATTORNEY FEES

Father has asked this court to award him attorney fees he incurred in this appeal relying on Tenn. Code Ann. § 36-5-103(c). Regardless of the applicability or inapplicability of that statute to the Father herein, we find we are precluded from awarding attorney fees by Tenn. Code Ann. § 36-5-101(l)(2), which provides, “The court shall not award attorney fees against the department, the IV-D contractor or any applicant for child support services, unless there is a clearly established violation of Rule 11 of the Tennessee Rules of Civil Procedure or for other contemptuous or other sanctionable conduct.” None of the conduct described in this provision occurred or is even alleged, so fees cannot be awarded against any of the named parties or entities. Ms. Irwin and, through her assignment of rights, the State of Arizona are applicants for child support services.

VIII. CONCLUSION

The order of the trial court is vacated, and the case is remanded for findings and conclusions in accordance with the requirements of Tenn. Code Ann. § 36-5-101(e)(1)(D) and (e)(1)(F). We remand this case to the Circuit Court of Davidson County for further proceedings consistent with this opinion. Tax the costs on appeal to the appellant, the State of Tennessee.

PATRICIA J. COTTRELL, J.